

17 4318

CIVIL COVER SHEET

Information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as this form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the court sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

ARTERS, LLC d/b/a ANGEL MEDFLIGHT

Residence of First Listed Plaintiff Maricopa, AZ
(EXCEPT IN U.S. PLAINTIFF CASES)

Attorneys (Firm Name, Address, and Telephone Number)

A. Brett, Esquire, Feinstein Doyle Payne & Kravec, LLC,
Fourth Avenue, Suite 1300, Pittsburgh, PA 15219 (412) 281-8400

DEFENDANTS

MERCK SHARPE & DOHME CORP. and THE MERCK MEDICAL,
DENTAL, LIFE INSURANCE AND LONGTERM DISABILITY PLAN

County of Residence of First Listed Defendant Hunterdon, NJ
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. § 1132(a)(1)(B)

Brief description of cause:

This action arises from Defendants' wrongful denial of ERISA health plan benefits.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

SEP 27 2017

DATE

09/26/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: **17851 N. 85th Street, Suite 350, Scottsdale, AZ 85255**

Address of Defendant: **c/o Merck Sharp & Dohme Corp., One Merck Drive, P.O. Box 100 WS 3B-35, Whitehouse Station, NJ 08889-0100**

Place of Accident, Incident or Transaction: **Magee Rehabilitation Hospital, Philadelphia, PA**

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) **Wrongful denial of ERISA health plan benefits**

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, **Tybe A. Brett**, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: **September 27, 2017**

Attorney-at-Law

30064

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: **September 27, 2017**

Attorney-at-Law

30064

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

AVIATION WEST CHARTERS, LLC, d/b/a
ANGEL MEDFLIGHT

v.

MERCK SHARPE & DOHME CORP. and THE MERCK
MEDICAL, DENTAL, LIFE INSURANCE AND
LONGTERM DISABILITY PLAN

CIVIL ACTION

17 4318
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

September 27, 2017

Date

412-281-8400

Telephone

Attorney-at-law

412-281-1007

FAX Number

Aviation West Charters, LLC, d/b/a Angel Medflight

Attorney for

tbrett@fdpklaw.com

E-Mail Address

SEP 27 2017

**Civil Justice Expense and Delay Reduction Plan
Section 1:03 - Assignment to a Management Track**

- (a) The clerk of court will assign cases to tracks (a) through (d) based on the initial pleading.
- (b) In all cases not appropriate for assignment by the clerk of court to tracks (a) through (d), the plaintiff shall submit to the clerk of court and serve with the complaint on all defendants a case management track designation form specifying that the plaintiff believes the case requires Standard Management or Special Management. In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.
- (c) The court may, on its own initiative or upon the request of any party, change the track assignment of any case at any time.
- (d) Nothing in this Plan is intended to abrogate or limit a judicial officer's authority in any case pending before that judicial officer, to direct pretrial and trial proceedings that are more stringent than those of the Plan and that are designed to accomplish cost and delay reduction.
- (e) Nothing in this Plan is intended to supersede Local Civil Rules 40.1 and 72.1, or the procedure for random assignment of Habeas Corpus and Social Security cases referred to magistrate judges of the court.

**SPECIAL MANAGEMENT CASE ASSIGNMENTS
(See §1.02 (e) Management Track Definitions of the
Civil Justice Expense and Delay Reduction Plan)**

Special Management cases will usually include that class of cases commonly referred to as "complex litigation" as that term has been used in the Manuals for Complex Litigation. The first manual was prepared in 1969 and the Manual for Complex Litigation Second, MCL 2d was prepared in 1985. This term is intended to include cases that present unusual problems and require extraordinary treatment. See §0.1 of the first manual. Cases may require special or intense management by the court due to one or more of the following factors: (1) large number of parties; (2) large number of claims or defenses; (3) complex factual issues; (4) large volume of evidence; (5) problems locating or preserving evidence; (6) extensive discovery; (7) exceptionally long time needed to prepare for disposition; (8) decision needed within an exceptionally short time; and (9) need to decide preliminary issues before final disposition. It may include two or more related cases. Complex litigation typically includes such cases as antitrust cases; cases involving a large number of parties or an unincorporated association of large membership; cases involving requests for injunctive relief affecting the operation of large business entities; patent cases; copyright and trademark cases; common disaster cases such as those arising from aircraft crashes or marine disasters; actions brought by individual stockholders; stockholder's derivative and stockholder's representative actions; class actions or potential class actions; and other civil (and criminal) cases involving unusual multiplicity or complexity of factual issues. See §0.22 of the first Manual for Complex Litigation and Manual for Complex Litigation Second, Chapter 33.

4400

MMB

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED

SEP 27 2017

KATE BARKMAN, Clerk
By _____ Dep. Clerk

AVIATION WEST CHARTERS, LLC,
d/b/a ANGEL MEDFLIGHT,

Plaintiff,

v.

MERCK SHARPE & DOHME CORP. and
THE MERCK MEDICAL, DENTAL, LIFE
INSURANCE AND LONGTERM
DISABILITY PLAN,

Defendants.

No.

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COMPLAINT

1. This action, brought under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*, arises from the defendants’ wrongful denial of a claim for health benefits.

2. Rachel B. fell 30 feet onto concrete and suffered severe injuries. She had multiple fractures in her spine and a spinal-cord injury that was “complete”—meaning, in her case, that she lost the ability to feel and use her lower extremities. She also had a skull fracture, scattered intracranial hemorrhages, and a pulmonary contusion.

3. Rachel was admitted into an intensive care unit at the Mercy Medical Center in Des Moines, Iowa, where she required major surgery, aggressive pulmonary care, and other treatments. Even after surgery, however, Rachel remained paraplegic.

4. The doctor overseeing her care at Mercy Medical Center determined that Rachel must transfer to a facility capable of neurologic-rehabilitation therapy that was specialized for spinal-cord injury.

5. Mercy did not have the specialized capabilities that Rachel required, but she was admitted into a facility that did: the Magee Rehabilitation Hospital in Philadelphia, Pennsylvania.

6. Aviation West Charters LLC d/b/a Angel MedFlight (“Angel MedFlight”) safely transported Rachel to Magee by air ambulance, and submitted a timely claim for benefits on Rachel’s behalf.

7. Acting through Horizon Blue Cross Blue Shield of New Jersey (“Horizon”), Defendant Merck Sharpe & Dohme Corp. (“Merck”) denied the claim, in violation of both its obligations under ERISA and the terms of the Merck Medical, Dental, Life Insurance and Long Term Disability Plan, Inc. (“Plan”).

8. Angel MedFlight, as Rachel’s assignee, brings this suit under 29 U.S.C. § 1132(a)(1)(B), seeking benefits under the terms of the Plan, prejudgment interest, and attorney’s fees and costs.

JURISDICTION AND VENUE

1. Jurisdiction of the court is based upon ERISA, 29 U.S.C. §§ 1132(e)(1), (f). Additionally, this action may be brought under 28 U.S.C. § 1331, which gives the district court jurisdiction over actions that arise under the laws of the United States.

2. ERISA provides a mechanism for internally appealing benefit denials. Those avenues of appeal have been exhausted. 29 U.S.C. § 1133.

3. Venue is proper in the Eastern District of Pennsylvania, where Rachel was transported and where she rehabilitated at Magee. 29 U.S.C. § 1132(e)(2); 28 U.S.C. § 1391.

PARTIES

4. Defendant Merck is a New Jersey corporation which is the sponsor and Plan Administrator of the Plan.

5. Defendant Plan is an ERISA welfare benefits plan that is sponsored by Merck. At all times relevant to this complaint, Rachel was a beneficiary of the Plan.

6. Angel MedFlight is a provider of specialized transportation services for patients who need them. Rachel assigned her claim for reimbursement to Angel MedFlight.

STATEMENT OF FACTS

7. Rachel was 24 years old when she fell 30 feet onto concrete and suffered severe injuries. She had multiple fractures in her spine and a spinal-cord injury that was “complete”—meaning, in her case, that she lost the ability to feel and use her lower extremities. She also had a skull fracture, scattered intracranial hemorrhages, and a pulmonary contusion (a bruise to the lung which interferes with the absorption of oxygen into the bloodstream).

8. Rachel was admitted into the intensive care unit at the Mercy Medical Center in Des Moines, Iowa, where she required major surgery, aggressive pulmonary care, and other treatments. Even after surgery, however, Rachel remained paraplegic.

9. Her doctor at Mercy determined that, in order to “ensure the best possible chance for [Rachel’s] long term survival” and to “optimize her neuromuscular recovery,” Rachel must transfer to a facility capable of neurologic-rehabilitation therapy that was specialized for spinal-cord injury.

10. Mercy did not have the specialized capabilities that Rachel required, but she was admitted into a facility that did: the Magee Rehabilitation Hospital in Philadelphia, Pennsylvania.

11. Rachel's doctor concluded that Magee was the "best possible setting" for Rachel to receive the therapy she required, for several reasons.

12. *First*, the doctor noted that Magee is "one of the nation's leading rehabilitation programs for spinal cord injuries" and "one of only 14 [facilities] in the country to provide coordinate[d] lifetime care for patients with spinal cord injuries." Citing peer-reviewed medical literature, the doctor observed that early transfer to a "specialized spinal injury center . . . results in lower rates of complication" and reduces "the risk of mortality and length of stay."

13. *Second*, Rachel was paraplegic post-operatively, and thus likely to require the assistance of her family and support system even after her discharge from the rehabilitation facility. Transferring Rachel to Magee allowed her to rehabilitate with the assistance of her family and friends—a factor independently identified by two physicians treating Rachel as important for her successful rehabilitation.

14. Rachel's condition prevented her from flying commercially or making the long drive from Iowa to Philadelphia. Angel MedFlight provided the necessary ambulance services and submitted a timely claim for benefits on Rachel's behalf.

15. Acting on behalf of Merck and the Plan, Horizon denied the claim. According to Horizon, "the air transportation [was] not for emergency treatment, and [Magee was] not the nearest hospital with the appropriate facilities for the treatment of the member's illness or injuries."

16. But this reason for denying Rachel's benefits has no basis in the Plan.

17. The Plan does not provide that air-ambulance transportation is covered only in cases of medical emergency; nor does it require that transfers by air ambulance be to the nearest facility.

18. What the Plan actually provides is that ambulance transfers are covered “when Medically Necessary”—which by the terms of the plan means when “reasonably required,” when “commonly and customarily recognized by physicians as appropriate,” and when not “educational or experimental in nature.” As described above, those conditions are met.

19. Moreover, even under the extra-contractual terms invented by Horizon, there is no basis for denying Rachel’s claim. It is not enough to merely assert that Magee was not the “nearest hospital” that could provide appropriate treatment for Rachel. Horizon failed to identify its preferred facility, failed to specify the services provided by that unnamed-but-closer facility, and failed even to address Rachel’s specific needs, much less the opinion of Rachel’s doctor that Magee gave Rachel the “best possible chance of long-term survival.”

20. Horizon’s failure is significant, because Angel MedFlight requested preauthorization for its ambulance services the day before the flight took place. If Horizon knew of a closer appropriate facility, it had an opportunity to arrange for Rachel to be transferred there. Instead, it simply denied the preauthorization request.

21. Angel MedFlight pointed out the inadequacy of Horizon’s denial and requested that Horizon (consistent with its obligation to conduct a full and fair review of Rachel’s claim) identify its preferred facility, specify the capabilities of that facility, and state whether that facility was willing and able to admit Rachel at the necessary time.

22. Horizon’s response ignored those requests and reiterated its earlier denial.

23. The ambulance services provided to Rachel are covered under the terms of the Plan. Angel MedFlight, as Rachel’s assignee, is therefore entitled to recover benefits from Merck and the Plan.

CAUSE OF ACTION

24. Angel MedFlight incorporates and realleges the allegations of Paragraphs 1 through 23.

25. Angel MedFlight, as the assignee of Rachel B., is entitled to recover benefits under the terms of the Plan. 29 U.S.C. § 1132(a)(1)(B).

26. Angel MedFlight, as the assignee of Rachel B., is entitled to recover prejudgment interest. 29 U.S.C. §§ 1132(a)(1)(B), (a)(3).

27. Angel MedFlight, as the assignee of Rachel B., is entitled to recover its attorney's fees and costs. 29 U.S.C. § 1132(g)(1).

WHEREFORE, Angel MedFlight seeks judgment in its favor and against the defendants, as follows:

A. Reimbursement of the reasonable-and-customary charges for transporting Rachel B. from the Mercy Medical Center in Des Moines, Iowa to the Magee Rehabilitation Hospital in Philadelphia, Pennsylvania on July 21, 2015;

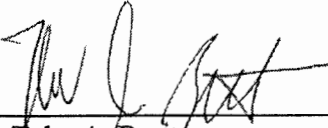
B. Prejudgment interest;

C. Any and all other relief to which Angel MedFlight may be entitled;

D. Costs of filing this action; and

E. Any such other and further relief this Court determines is just and reasonable.

Dated: September 26, 2017



Tybe A. Brett

PA ID No. 30064

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Attorneys for Aviation West Charters, LLC

*application for admission *pro hac vice* to be filed